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17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19 SAN FRANCISCO DIVISION

20 IN RE OPTICAL DISK DRIVE PRODUCTS
21 ANTITRUST LITIGATION

22 No. 3:10-md-2143 RS (JCS)

23 INDIRECT PURCHASER PLAINTIFFS'
24 RESPONSE TO OPPOSITION TO
25 ERWIN'S ATTORNEY'S FEE MOTION
26 *IN PART*, AND OPPOSITION TO
27 ERWIN-IPP SETTLEMENT FOR
28 ATTORNEY'S FEES

DATE ACTION FILED: Oct. 27, 2009

15 This Document Relates to:

16 ALL INDIRECT PURCHASER ACTIONS

1 Indirect Purchaser Plaintiffs respectfully submit this brief response to absent class member
 2 Shiyang Huang's Opposition to Erwin's Attorney's Fee Motion *in Part*, and Opposition to Erwin-
 3 IPP Settlement for Attorney's Fees (filed Aug. 15, 2022, ECF No. 3103).

4 Huang is mistaken that class notice must be given. Under Fed. R. Civ. P. 23, class members
 5 have a right to notice under many, but not all, circumstances. Objecting class member Conner Erwin
 6 seeks an incentive award for conferring a benefit on the class and a fee award to his counsel. His
 7 motion is not a substantive resolution of underlying merits issues, which concluded years ago.
 8 Reflecting this difference, Rule 23(e)(5)(B) mandates only that a "payment or other consideration" to
 9 an objecting class member must be "approved by the court after a hearing." Likewise, under Rule
 10 23(h)(1), class notice of fee motions is required only for fee "motions by class counsel." Huang does
 11 not contest that as an absent class member who has objected, he received notice of Erwin's fee
 12 motion and related filings.

14 This Court has discretion to notify the class, but Huang cites no relevant authority for his
 15 argument, contradicted by the language of Rule 23, that class notice is mandatory before granting
 16 Erwin's motion on the terms the parties have proposed. Because Class Counsel's fees are not
 17 implicated, Erwin's motion presents no issue of, as earlier in the litigation, whether class notice "at
 18 least would be prudent under the circumstances." ECF No. 2956 at 2 (order addressing whether Class
 19 Counsel's renewed fee motion on remand called for class notice).

21 Indeed, class notice would be cumbersome and impractical under the circumstances now. It
 22 would delay distribution to class members who have long awaited it and, except for Huang, have not
 23 persisted with objections. Given the finality the proposed terms would achieve, asking the class to
 24 pay less than 15 cents on the dollar for the additional amount returned to the settlement fund is fair,
 25 reasonable and adequate and warrants the Court's approval under Rule 23.

1 DATED: August 17, 2022

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